Decision for dispute CAC-UDRP-102490

Case number	CAC-UDRP-102490
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Domain names	peserico.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Confezioni Peserico S.p.a.

Complainant representative

Organization	Convey srl

Respondent

Organization	ryusung

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- Italian Trademark Registration N. 0000564874 for PESERICO (word mark) of April 1, 1992 in class 25;

- Italian Trademark Registration N. 0000779680 for PESERICO (word mark) of May 12, 1999 in class 25;

- European Union Trademark Registration N. 011842564 for PESERICO (word mark) of September 25, 2013 in classes 14, 18, 25;

- European Union Trademark Registration N. 1236110 for PESERICO (word mark) of November 19, 2014 in classes 3, 35;

- International Trademark Registration N. 511186 for PESERICO (word mark) of March 27, 1987 in class 25 designating also Republic of Korea;

- International Trademark Registration N. 1180627 for PESERICO (word mark) of August 5, 2013, in classes 14, 18 and 25

designating also Republic of Korea;

- International Trademark Registration N. 1236110 for PESERICO (word mark) of November 19, 2014, in classes 14, 18, 25 designating also Republic of Korea;

- U.S.A. Trademark Registration N. 2087159 for PESERICO of August 12, 1997 in class 25.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Language of Proceedings

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name is Korean but the Complainant respectfully requested that the proceeding would be in English in light of the following circumstances:

- the disputed domain name is registered in Latin characters, rather than Korean script;

- the website corresponding to the disputed domain name is in English;

- the Respondent replied in English to the cease and desist letter sent by the Complainant's Authorized Representative;

- in the decision TSC Apparel, LLC v. ryusung Claim Number FA1804001780393, where the Domain Name owner acted as a respondent, the panel decided to proceed the case in English as follows: "an issue arises as to the proper language of the proceedings since the Registration Agreement is written in Korean. Under Rule 11, the Panel may therefore order that the Complaint should be resubmitted in Korean and the case recommenced. Alternatively, the Panel may decide to continue the case with the English-language submission of the Complaint. In this case the Panel elects the latter path since there is ample evidence that Respondent is conversant in English";

- in order to avoid additional expense and delay that would be incurred if the Complaint must be translated into Korean;

- English is the primary language for business and international relations.

Along these lines, see the decision Volkswagen AG v. Hui Min Wang, Wang Hui Min, WIPO Case No. D2017-0860 "considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in his or her ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint and all supporting documents to be re-filed in Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding".

Having considered all the matters above, the Panel should determine under paragraph 11(a) of the Rules that (i) it accepts the Complaint and all supporting materials as filed in English; (ii) English is the language of the proceeding and the decision will be rendered in English.

This Complaint is based on the following grounds:

The Complainant is Confezioni Peserico S.p.a., a joint stock company registered in Italy, founded in 1962 by Mary Peserico.

The Complainant is the owner of the trademark PESERICO with several international and national trademark registrations worldwide, including the following:

- Italian Trademark Registration N. 0000564874 for PESERICO (word mark) of April 1, 1992 in class 25;

- Italian Trademark Registration N. 0000779680 for PESERICO (word mark) of May 12, 1999 in class 25;

- European Union Trademark Registration N. 011842564 for PESERICO (word mark) of September 25, 2013 in classes 14, 18, 25;

- European Union Trademark Registration N. 1236110 for PESERICO (word mark) of November 19, 2014 in classes 3, 35;

- International Trademark Registration N. 511186 for PESERICO (word mark) of March 27, 1987 in class 25 designating also Republic of Korea;

- International Trademark Registration N. 1180627 for PESERICO (word mark) of August 5, 2013, in classes 14, 18 and 25 designating also Republic of Korea;

- International Trademark Registration N. 1236110 for PESERICO (word mark) of November 19, 2014, in classes 14, 18, 25 designating also Republic of Korea;

- U.S.A. Trademark Registration N. 2087159 for PESERICO of August 12, 1997 in class 25.

The Complainant is active in the sector of high couture and great manufacturing tradition in the region of Veneto, Italy. The company was created in 1962 by Maria Peserico in Cornedo Vicentino, in the province of Vicenza, as a small workshop specializing in pants for women, and in less than a decade, it became a larger company with 50 employees.

In 1975, Maria's husband, Giuseppe Peruffo became the company manager and added to the work done for third parties the brand name collection of pants and skirts. The production was rooted in the local tradition, but in the 80's the distribution started expanding abroad. The constant growth and the international success lead PESERICO to expand its creative universe: in the 90's the collections grew to cover the total look and were produced exclusively in Italy.

Nowadays, all PESERICO clothing is produced in Cornedo Vicentino, in the Veneto Region (north-east of Italy), with 150 employees and a network of 15 external labs creating satellite activities for 500 people. For knitwear, the Complainant bought in Carpi a knitwear factory specialized in precious yarns like silk, cashmere and Egyptian cotton.

The brand is led today by the second generation of the same family: Riccardo Peruffo is the CEO and the Creative Director, together with his wife Paola Gonella.

The PESERICO brand is distributed to 1110 stores all over the world, in more than 20 brand- stores and, since 2005, the company has focused on the development of its own flagship stores, firstly in Italy, opening monobrand shops in Turin, Milan, Rome, Verona and Florence and then worldwide: Germany, South Korea, China, Russia, Japan and U.S.A.

In order to protect and promote its trademark PESERICO in the Internet, Complainant registered various domain names consisting of the word "PESERICO" including <peserico.it>, <pesericodistribuzione.it>, <peserico.de>, <pesericousa.com> and the official website www.peserico.it generates a significant number of visits by Internet users every day. The Complainant is active also on the main Social Media with official accounts on Facebook, Twitter, Instagram, Youtube and LinkedIn.

In the case at issue, the disputed domain name was registered on May 12, 2003, and it is currently redirected to a Sedo's

parking page with various sponsored links.

As soon as the Complainant became aware of the Respondent's registration and use of the disputed domain name, confusingly similar to its registered trademark PESERICO, it instructed its representative to address to the owner of the domain name a cease and desist letter in order to notify it of the infringement of the Complainant's trademark rights, requesting the immediate cease of any use, and the transfer of, the disputed domain name to the Complainant.

A cease and desist letter was therefore sent, on April 16, 2019, by e-mail to the Respondent's known e-mail addresses indicated in the WhoIs record; the Respondent replied on the same day refusing to transfer the disputed domain name explaining that the disputed domain name was registered for it's future business without any further explanation.

In light of the failure to comply with the request to transfer the disputed domain name, the Complainant instructed its representative to file the present Complaint in order to obtain the transfer of the disputed domain name under its ownership and control.

A. Identical or confusingly similar

The disputed domain name <peserico.com> is identical to the trademark PESERICO in which the Complainant has rights, as highlighted by the copies of the trademark registration certificates and printouts of the trademark records published on the online database of the competent Trademark Offices.

Moreover, the top level ".com" is merely instrumental to the use in Internet - as found in The Forward Association, Inc., v. Enterprises Unlimited (FORUM case FA0008000095491, October 3, 2000) and numerous others - and not able to affect the identity of the Domain Names to the Complainant's trademark.

Therefore, the disputed domain name fully incorporates the word element of the Complainant's trademark. As indicated in the decision for No Zebra Network Ltda v. Baixaki.com, Inc. Case No. D2009-1071: "having determined, on the limited record presented in this proceeding, that BAIXAKI appears to be a mark in which the Complainant has rights, the Panel must next assess whether the domain name is identical or confusingly similar to that trademark. The disputed domain name fully incorporates the word element of the Complainant's BAIXAKI Mark".

Similarly, in the FORUM decision where the holder of the Domain Name was the Respondent, i.e. TSC Apparel, LLC v. ryusung Claim Number FA1804001780393 it is highlighted that "a trademark registered with a national authority is evidence of trademark rights. Since Complainant evidences its registration of the trademark with USPTO the Panel finds that it has shown trademark rights. The disputed domain name takes the whole of the trademark to which it simply adds the gTLD, ".com". The Panel finds that the disputed domain name is identical to the trademark for the purposes of the Policy".

Furthermore, on the Respondent's website corresponding to the disputed domain name, sponsored links to Complainant's competitors are displayed. Such use of the disputed domain name suggests that the goal of the Respondent is to give the idea to the consumers that they have received the Complainant's authorization.

In light of the above, the disputed domain name is certainly identical to the prior registered trademarks in which the Complainant has rights pursuant to paragraph 4(a)(i) of the Policy.

B. No rights or legitimate interests

As a preliminary note, along the lines set forth in Pharmacia & Upjohn Company v. Moreonline, WIPO Case No. D2000-0134 and National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118, the mere registration of a domain name does not establish rights or legitimate interests in a disputed domain name.

The Respondent is not an authorized dealer of the Complainant nor has ever been authorized by the Complainant to use the trademark PESERICO in the disputed domain name.

The Complainant is not in possession of, nor aware of the existence of, any evidence demonstrating that the Respondent, whose name is prima facie Ryusung, might be commonly known by the disputed domain name or a name corresponding to the disputed domain name as an individual, business, or other organization.

The Respondent has not provided the Complainant with any evidence of its use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute.

In the case at hand, “PESERICO” is neither a generic term, nor descriptive, and it is not a dictionary word, rather it is an inherently distinctive trademark which solely refers to - and should belong to the Complainant. As anticipated, the word PESERICO comes from Maria Peserico, the founder of the Confezioni Peserico S.p.a. in 1962.

Considered that no relationship has ever been established between the parties and no lawful connection to the denomination “PESERICO” appears from the records either, the Complainant could not find any evidence on which to ground the assumption that the Respondent is making a bona fide offering of goods or services related to the denomination “PESERICO”.

Rather, the Complainant contends that the Respondent has registered the disputed domain name - which is identical to the Complainant’s trademark - to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, since the disputed domain name - at present - is connected to a parking page with various sponsored links. Therefore, the disputed domain name is not in use in any meaningful manner.

The above-described use of the disputed domain name suggests that the Respondent intended to trade upon the Complainant’s trademarks by intentionally attempting to attract to a parking page with various sponsored links users looking for the Complainant by misleading them as to the source or affiliation of its website.

According to the decision Media General Communications, Inc. v. Rarenames, WebReg, WIPO Case No. D2006-0964, using domain names for advertising links can in certain circumstances represent legitimate interests for the purposes of paragraph 4(c) of the Policy, such as when the following criteria are all met:

- the respondent regularly engages in the business of registering and reselling domain names, and/or using them to display advertising links;

- the respondent makes good-faith efforts to avoid registering and using domain names that are identical or confusingly similar to marks held by others;

- the domain name in question is a “dictionary word” or a generic or descriptive phrase;

- the domain name is not identical or confusingly similar to a famous or distinctive trademark; and

- there is no evidence that the respondent had actual knowledge of the complainant’s mark.

The Respondent here is clearly in the business of reselling domain names on a large scale and using them, at least in the interim, to point to websites with advertising links. But the Response does not indicate what steps, if any, the Respondent takes in good faith to avoid registering, using, and selling domain names that correspond to trademarks. The domain name in question is a short string of letters, but it is not a dictionary word or descriptive phrase. Rather, it is suspiciously identical to the Complainant’s arbitrary mark.

Thus, the determination of legitimacy in this case largely hinges on the question of bad faith, which is better addressed

below in connection with the third element of the Policy. If the Respondent registered and used the disputed domain name, and offered it for sale, in good faith, then we must conclude that the Respondent had a legitimate interest in the disputed domain name as it does in hundreds of thousands of other domain names in its portfolio. On the other hand, if the Respondent failed to act in good faith, by registering and using a non-generic domain name that it should have realized was likely to correspond to a trademark, then the Respondent has no legitimate interest in this particular Domain Name".

In the case at hand, the disputed domain name is identical to the Complainant's trademark, active in the sector of female clothes since many years and in the Republic of Korea since 2015. Indeed, the registered trademark PESERICO has been used extensively and exclusively by the Complainant since 1987 and through long established and widespread use since 1962, the aforesaid trademark of the Complainant enjoys worldwide reputation in the sector of female clothing.

The disputed domain name was registered in the name of the Respondent on April 2016, years after the Complainant obtained its trademark registrations, including in the Republic of Korea, where the Respondent is located. According to the searches in the whois history database, the disputed domain name was registered in the name of the Respondent on April 15, 2016, some months later the signature of the agreement with the Korean distributor. By such a peculiar coincidence, it could be assumed that the Respondent was aware of the Complainant's trademark.

As anticipated, the Complainant has various stores and showrooms worldwide, including in the Republic of Korea where it is active since 2015 with an official distributor, i.e. Aabang CO. Ltd. http://www.aabang.co.kr/. The agreement with the Korean distributor was signed in 2015. The PESERICO flagship stores in Korea were already promoted by Complainant's Facebook account on April 29, 2016, few days later the registration of the disputed domain name by the Respondent. At that time, the Complainant's stores in Korea were the following:

Lotte Department Store

Main (Branch): 81, Namdaemun-ro, Jung-gu, Seoul;

Jamsil (Branch): 240, Olympic-ro, Songpa-gu, Seoul.

Hyundai Department Store

Trade Center - Seoul - 517, Teheran-ro, Gangnam-gu, Seoul, Korea;

Pangyo - Gyeonggi-do - 20, Pangyoyeokro 146 gil, Bundang-gu, Seongnam-si.

Nowadays, in Korea the Complainant has widened its offer opening further flagship stores:

Lotte Department Store

Main (Branch): 81, Namdaemun-ro, Jung-gu, Seoul;

Jamsil (Branch): 240, Olympic-ro, Songpa-gu, Seoul;

Daegu (Branch): 161, Taepyeong-ro, Buk-gu, Daegu;

Busan Main (branch): 772, Gaya-daero, Busan.

Hyundai Department Store

Trade Center (Branch): 517, Teheran, Gangnam, Seoul;

Busan (Branch): 125, Beomil-ro, Dong-gu, Busan;

Daegu (branch): 2077 Dalgubeoldae-ro, Ju, Daegu.

In light of the above and by virtue of its extensive use since 1962 and of the trademark's distinctiveness, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the disputed domain name. Anyway, the Respondent should have made some researches on the main search engines about the trademark PESERICO, before registering the disputed domain name.

Furthermore, the trademark PESERICO comes from the name of the Complainant's founder and it is extremely unlikely that the disputed domain name was chosen by the Respondent without having in mind the trademark of the Complainant. It is clear that the Respondent was well aware of the trademark PESERICO and registered the disputed domain name with the intention to refer to the Complainant and its trademark.

The Respondent has also a practice of registering domain names with extension .com, which incorporate other trademarks, redirecting them to parking pages with various sponsored links and some of them are also offered for sale: 1linux.com, linuxm.com, linuxmx.com, linuxplaza.com (trademark LINUX), verizonetel.com, verizontel.com (trademark VERIZON), viagra365.com, viagrapower.com (trademark VIAGRA), bankaon.com, bankaone.com (trademark AON), volvics.com (trademark VOLVIC), airkom.com (trademark AIRKOM), aresbank.com (trademark ARESBANK), cctvsale.com (trademark CCTV), halifaxpa.com (trademark HALIFAX), midasclub.com, midasglobal.com, midasshop.com, midastech.com, midaswell.com (trademark MIDAS), asahibank.com (trademark ASAHI BANK), belbank.com (trademark BELL BANK), berliner-bank.com (trademark BERLINER BANK), blueaircon.com (trademark BLUE AIR). Moreover, as indicated in the decision TSC Apparel, LLC v. ryusung Claim Number FA1804001780393, the Respondent was the owner of the domain name <tultex.com> identical to the trademark TULTEX. Therefore, the patent purpose of the Respondent is that of registering domain names containing third parties' trademarks in order to bait Internet users and obtain revenues from the sponsored links.

In light of the above, it can be stated that not all the elements mentioned in the decision Media General Communications, Inc. v. Rarenames, WebReg, WIPO Case No. D2006-0964 (about the legitimacy of the use of advertising links) are present here, hence the use by the Respondent of the domain name at issue for advertising links cannot establish rights or legitimate interests for purposes of paragraph 4(c) of the Policy.

As a final remark on the issue of rights or legitimate interest, the mere registration of a domain name does not establish rights or legitimate interests in a domain name, as highlighted also in the decision Pharmacia & Upjohn Company v. Moreonline, WIPO Case No. D2000-0134 and National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118, the mere registration of a domain name does not establish rights or legitimate interests in a domain name.

For all of the foregoing reasons, the Complainant contends that it has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby "the burden of production shifts to the respondent to show by providing concrete evidence that it has rights to or legitimate interests in the domain name at issue" (see e.g. Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455).

C. Registered and used in bad faith

According to the Complainant, in registering and using the disputed domain name, the Respondent has intentionally

attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the site or location (paragraph 4(b)(iv) of the Policy).

As anticipated, the registered trademark PESERICO has been used extensively and exclusively by the Complainant since 1987 and through long established and widespread use since 1962. The Complainant has various stores and showrooms worldwide, including in the Republic of Korea where it is active since 2015 both with an official distributor and with some showrooms.

Therefore, by virtue of its extensive use and of the trademark's distinctiveness, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the disputed domain name.

According to the searches in the whois history database, the Respondent registered the disputed domain name on April 15, 2016, some months later the signature of the agreement with the Complainant's Korean distributor.

Pursuant to the "WIPO Overview 2.0" (http://www.wipo.int/) it is a shared view that "the transfer of a domain name to a third party does amount to a new registration", see also Barry Lill v. Linda Chan, FORUM Case No. FA1204001440292, holding "The ordinary rule on registration is that transfer to a new registrant constitutes "registration" for purposes of paragraph 4(a)(iii)'s determination of bad faith". Hence this point in time, April 15, 2016, should be borne in consideration for the purposes of determining bad faith in registration. Since the consensus view on the point is that of treating a transfer of a domain name as a new registration (see supra), bad faith will have to be found on Ryusung's side at and from the aforementioned transfer date.

Moreover, as indicated in the Respondent's answer of April 16, 2019 to the cease and desist letter sent by the Authorized Representative, the Respondent refused to the transfer the disputed domain name to the Complainant because it reserved <peserico.com> for its future business. Notwithstanding the three years passed from the registration in the name of the Respondent, the disputed domain name is still redirected to a parking page with various sponsored links related to clothes, including website offering for sale clothes for women.

With reference to the above, the Complainant highlights that it has been stated in many decisions, i.a. in Herbalife International, Inc. v. Surinder S. Farmaha, WIPO Case No. D2005-0765, that the registration of a domain name with the knowledge of the complainant's trademark registration amounts to bad faith. Also, in the decision where the Respondent appeared, i.e. TSC Apparel, LLC v. ryusung Claim Number FA1804001780393, the Panel affirmed that "the evidence accompanying the Complaint shows use of the trademark for many years. The domain name was registered much later and the Panel finds it more likely than not that Respondent was aware of the Complainant's business and its trademark. The trademark is a distinctive, invented word and there is no plausible reason that Respondent would have struck upon it by chance".

As to the use of the disputed domain name, the Complainant points out that, from the date of registration in the name of the Respondent, i.e. April 15, 2016, the disputed domain name has been redirected to a Sedo's parking page with various sponsored links, including Complainant's competitors, obtaining revenues from the users clicking on the links.

As indicated in the decision SAP SE v. Domains by Proxy, LLC / Kamal Karmakar WIPO Case No. D2016-2497 the profit could be obtained either by the Respondent or the provider: "Panels have found that a domain name registrant will normally be deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content - for example, in the case of advertising links appearing on an "automatically" generated basis. To the extent that the presence of certain advertising or links under such arrangement may constitute evidence of bad faith use of the relevant domain name, such presence would usually be attributed to the registrant unless it can show some good faith attempt toward preventing inclusion of advertising or links which profit from trading on third-party trademarks. It may not be necessary for the registrant itself to have profited directly under such arrangement in order to establish bad faith use under paragraph 4(b)(iv) of the UDRP. It would normally be sufficient to show that profit or "commercial gain" was made

by a third party, such as by the operator of an advertising revenue arrangement applicable to the registrant, or a domain name parking service used by the registrant. Reasons may include that a rights holder should be able to rely on the registrant for enforcement purposes, or that such registrant has undertaken not to infringe third party rights in its registration agreement".

According to the screenshot of November 24, 2016, among the sponsored links displayed in the page, the first one was related to the Complainant and this link related to the Complainant still appeared in the web pages corresponding to the Domain Name of July 17, 2017 and of February 11, 2018 so at that time the Respondent was aware of the existence of the trademark PESERICO and prima facie targeted the parking page to include the Complainant's trademark.

As displayed in the decision Owens Corning v. NA WIPO Case No. D2007-1143: "Even if the Respondent did not have any direct influence over what sponsored links were chosen, in this case it does not matter. The Respondent must have known that by using a parking service, some sponsored links would be generated. Since the Respondent knew that the term "Pink Batts" was one which could only be sensibly associated with the Complainant's insulation products, she must also have known that any sponsored links generated by GoDaddy were likely to relate to insulation connected goods and services. Finally, even if the sponsored links had been to businesses unconnected with insulation, again in this case it would not matter. What is important is that the Respondent must have known that internet users seeking information about the Complainant's products would then find themselves at a website upon which goods and services unrelated to the Complainant were advertised.

In the circumstances, the Panel finds the use of GoDaddy's domain name parking service was a bad faith use of the Domain Name".

As an additional circumstance demonstrating the bad faith, the Complainant points out the disputed domain name was registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct.

As evidenced in the previous paragraph, the disputed domain name is not the only one that the Respondent is holding in full disregard of relevant laws and regulations as well as in bad faith. Indeed, Respondent is also the owner of several domain names with extension .com, which incorporate other trademarks: <1linux.com>, <linuxm.com>, <linuxmx.com>, <linuxplaza.com> (trademark LINUX), <verizonetel.com>, <verizontel.com> (trademark VERIZON), <viagra365.com>, <viagrapower.com> (trademark VIAGRA), <bankaon.com>, <bankaone.com> (trademark AON), <volvics.com> (trademark VOLVIC), <airkom.com> (trademark AIRKOM), <aresbank.com> (trademark ARESBANK), <cctvsale.com> (trademark CCTV), <halifaxpa.com> (trademark HALIFAX), <midasclub.com>, <midasglobal.com>, <midasshop.com>, <midastech.com>, <midaswell.com> (trademark MIDAS), <asahibank.com> (trademark ASAHI BANK), <belbank.com> (trademark BELL BANK), <berliner-bank.com> (trademark BERLINER BANK), <blueaircon.com> (trademark BLUE AIR). All the domain names are redirected to parking pages with various sponsored links, as indicated in the decision TSC Apparel, LLC v. ryusung Claim Number FA1804001780393, the Respondent was the owner of the domain name tultex.com identical to the trademark TULTEX.

As regard to this point, previous panels have found bad faith under Paragraph 4(b)(ii) of the Policy where the dispute involved several disputed domain names, each belonging to the Respondent. See for example Harcourt, Inc. v. Fadness, FORUM Case No. 95247 (finding that one instance of registration of several infringing domain names satisfies the burden imposed by the Paragraph 4(b)(ii) of the Policy).

Respondent's behavior can be considered in Complainant's view as a pattern of abusive conducts and Complainant argues that it meets the requisites set forth by the Paragraph 4(b) of the Policy, proving bad faith registration on Respondent's side.

In light of the above, the Complainant respectfully submits that the disputed domain name was registered and is being used in bad faith in full satisfaction of paragraphs 4(a)(iii) and 4(b) of the Policy.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Regarding language of the proceedings, the decision is issued in English in accordance with authority conferred by Paragraph 11(a) of the Rules, in view of the following circumstances:

- the website corresponding to the disputed domain name is in English;

- the Respondent replied in English to the cease and desist letter sent by the Complainant's Authorized Representative.

Consequently, in the opinion of this Panel, it is clear that there is no defenselessness.

PRINCIPAL REASONS FOR THE DECISION

I. RIGHTS

The disputed domain name is identical to the Complainant's registered trademarks.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the disputed domain name.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>".

Furthermore, apparently the Respondent did not invoke any right or legitimate interest in reply to the C&D letters sent by the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

The Complainant's PESERICO trademark is well-known in the fashion industry, well before the registration of the disputed domain name. The Respondent's registration of the disputed domain name wholly incorporating a well-known third party mark is, in the Panel's view, indicative of bad faith.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D20170334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D20030327)."

Furthermore, once the proceedings were open, the Complainant has filed evidence that the Respondent sent an e-mail to the Complainant offering the disputed domain name for a price of $3,000.

According to the Article 4 b (i) of the Policy, proposing to the Complaint to acquire the disputed domain name for an amount in excess to the out-of-pocket costs directly related to the disputed domain name is an evidence of registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **PESERICO.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2019-06-25

Publish the Decision